

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

**To help you better understand the attached rights and required special education procedures...**

*Help is just a phone call or a mouse click away:*

## **Raising Special Kids**

2400 N. Central Avenue, Suite 200  
Phoenix, AZ 85004  
Tel 602-242-4366; Fax 602-242-4306  
Toll Free 800-237-3007  
E-mail [info@raisingspecialkids.org](mailto:info@raisingspecialkids.org)  
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## **Pilot Parents of Southern Arizona**

2600 N. Wyatt Drive  
Tucson, AZ 85712  
Tel 520-324-3150; Fax 520-324-3152  
Toll Free 877-365-7220  
E-mail [ppsa@pilotparents.org](mailto:ppsa@pilotparents.org)  
[www.pilotparents.org](http://www.pilotparents.org)

## **Parent Information Network**

Arizona Department of Education/Exceptional Student Services  
1535 W. Jefferson  
Phoenix, AZ 85007  
Tel 602-542-3852; 800-352-4558  
Fax 602-542-5404  
E-mail [cvalenz@ade.az.gov](mailto:cvalenz@ade.az.gov)  
[www.ade.az.gov/ess/pinspals](http://www.ade.az.gov/ess/pinspals)

## **Arizona Center for Disability Law**

Special Education Hotline  
3839 N. Third Street, Suite 209  
Phoenix, AZ 85012  
Tel/TDD 602-274-6287; Fax 602-274-6779  
Toll Free 800-927-2260  
E-mail [center@acdl.com](mailto:center@acdl.com)  
[www.acdl.com](http://www.acdl.com)

## **Arizona Center for Disability Law**

100 Stone Avenue, Suite 305  
Tucson, AZ 85701  
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# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

**The Individuals with Disabilities Education Act Amendments of 2004 (IDEA 2004)** is a federal special education law that requires school districts, charter schools, and other public educational agencies (in this booklet all are referred to singularly as the *school*) to provide a free appropriate public education (FAPE) to eligible children with disabilities. This free appropriate public education refers to special education and related services, which are described in an individualized education program (IEP) and provided to an eligible child in the least restrictive environment (LRE).

**Children with disabilities and their parents** are guaranteed certain educational rights, known as procedural safeguards, from ages birth through 21. This booklet will help you make appropriate educational decisions for your child. **If your child is not currently receiving special education services**, you have been given this information either because you asked that your child receive special education services or because we believe that special education services may be necessary for your child to receive a free appropriate public education (FAPE).

**If your child is already receiving special education services**, we are providing this information to you because we are required to give it to you: (1) at least once a year, (2) if you have requested it, or (3) if either you or the school has requested an impartial due process hearing.

It is important that you understand all of these rights. Make sure that you ask questions until you understand all of the procedures to which you and your child are entitled.

## **THE PROCESS**

### ***What do we do if we suspect that your child may have a disability?***

We are required to evaluate your child if we suspect he or she may have a disability that affects learning to identify and document the specific disability and, if a disability is found, to determine what special education and related services are required. A team of professionals and you as the parent will review information regarding your child (including information provided by you) and will decide what additional information, if any, is necessary to determine if your child is a child with a disability.

### ***What do we do if additional information is needed?***

Any additional evaluation will not include basic tests or procedures used routinely for all students within a class, grade, or school. We will use tests and procedures selected specifically for your child. This evaluation will be conducted according to federal and state requirements and will contain information you provide. Following the evaluation, we will provide you with the complete results within 60 calendar days of your written consent for the evaluation.

### ***What do we do if your child is found to be eligible for special education services?***

We will ask you to help us develop an individualized education program (IEP) and identify the special education and related services and any other support services your child needs. You may ask others to be present at the IEP meeting, if you wish.

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

## **WRITTEN NOTICES**

### ***What types of notice can I expect to receive?***

There are three types of special education notices that you should expect to receive: (1) this procedural safeguards notice, (2) a prior written notice of actions proposed or refused, and (3) a meeting notice.

### ***What is the procedural safeguards notice?***

The information contained in this booklet will serve as the procedural safeguards notice. It has a full explanation of your rights and those of your child, along with procedures that we will use to ensure that your rights and those of your child are protected throughout the special education process. A copy of this notice is also located on the Arizona Department of Education Web site at <http://www.ade.az.gov/ess/downloads/ProceduralSafeEnglish.pdf>

### ***When should I receive the procedural safeguards notice?***

A procedural safeguards notice must be provided to you, at a minimum, at the following times:

1. One time a year;
2. When you request one;
3. When we initially refer your child or you request an evaluation of your child; and
4. When you or the school requests due process.

### ***What is the prior written notice?***

The prior written notice will explain what we propose or refuse to do and how we reached this decision, including a description of each evaluation procedure, assessment, record, or report that we used in reaching that decision. We will also describe the alternatives we considered and why we chose the action that we wish to take, as well as any other factors that were relevant to our decision. In addition, the prior written notice must include a statement that parents of a child with a disability have protection under the procedural safeguards. If this notice is not for the initial referral for evaluation, you will also be told where you can obtain another copy of the procedural safeguards notice and sources you can contact to get help in understanding your rights.

### ***When should I receive the prior written notice?***

Prior written notice must be provided to you whenever we propose or refuse to initiate or change the identification, evaluation, or educational placement of your child, or for the provision of a free appropriate public education (FAPE) for your child. This means that you will be given prior written notice whenever we want to begin, change, or discontinue special education and related services to your child, or when we propose changing the conditions under which these services are being provided.

### ***What can I do if I do not understand the prior written notice?***

The notice must be written in language that is understandable to the general public. If you have trouble understanding this or any other document, please ask us to explain any terms or procedures that you do not understand. You may also call the Arizona Department of

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

Education/Exceptional Student Services (ADE/ESS) or advocacy and support groups. We encourage you to ask questions until you fully understand. We will arrange for an interpreter if you are a parent who speaks a language other than English. If you are a parent who is deaf or blind or has no written language, we will arrange to communicate this notice to you in the manner you normally use (such as in sign language, Braille, or through oral communication).

## ***What can I do if I disagree with the action indicated in the prior written notice?***

If you disagree with a proposed or refused action after receiving a prior written notice, you should call your child's principal, the director of special education, or the individual in charge of the educational program to discuss the proposed or refused action. If we cannot agree on the action, you have the right to seek resolution by requesting mediation or an impartial due process hearing. Mediation and due process hearings are discussed, in more detail, later in this document.

## ***What is the meeting notice?***

We must provide you with a meeting notice when any group meets to make decisions about the identification, evaluation, or educational placement of your child in special education, or concerning the provision of a free appropriate public education (FAPE) for your child. You will be invited to all these meetings.

## ***What will the meeting notice tell me?***

The meeting notice will tell you the purpose, time and location of the meeting, and who will be invited to attend.

## ***What will happen if you cannot attend a meeting?***

If you cannot attend the meeting, we may use other methods to ensure your participation, including making individual or conference telephone calls or arranging a video conference. Decisions may be made without you if we are unable to obtain your participation. In this case, we must keep a record of our attempts to ensure your participation.

## **PARENT CONSENT**

### ***What is informed consent?***

*Consent* means that you as the parent have been fully informed of all information relevant to the activity for which we are seeking consent, in your native language or other method of communicating. *Written consent* means that you understand and agree in writing to our carrying out the activity for which your consent is sought; the consent must describe the activity and list the records (if any) that will be released and to whom. You as the parent need to understand that the granting of consent is voluntary and may be revoked at any time. If you revoke consent, that revocation is not retroactive (i.e., it does not negate an action that occurred after the consent was given and before the consent was revoked).

### ***When is my written consent required?***

Your informed consent is required in five instances:

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

1. Before we can begin gathering additional information to determine if your child requires special education and related services;
2. Before we gather new information during a reevaluation of your child;
3. Before your child is placed for the first time in a special education program;
4. Before we release any personally identifiable information about your child to any person not otherwise entitled by law to see it; and
5. Before we access your private insurance in regard to services required for providing FAPE.

Your agreement in any of these instances must be voluntary and may be revoked at any time. If you do not consent and we believe that we are required to act to provide your child with FAPE, we must follow certain procedures. We may ask you to enter into mediation, or we may initiate an impartial due process hearing to override your refusal, except as it pertains to instances three and five above. We may not initiate a due process hearing to override your refusal for initial placement (number three). And in regard to your private insurance (number five), we must inform you that your refusal to permit us to access your private insurance does not relieve us of our responsibility to ensure that FAPE is provided to your child.

## ***When is my written consent not required?***

We can conduct a reevaluation without your consent if we can show that we took reasonable measures to obtain your consent and you did not respond. We may also release your child's educational records without your consent under specific exceptions allowed under the law.

## **PARENT PARTICIPATION**

### ***Do I have the right to participate in meetings about my child?***

You, as the parents or guardians of a child with a disability, have the right and the responsibility to be involved in all meetings regarding the process of identification, evaluation, placement, and the provision of FAPE for your child. Covered meetings do not include informal or unscheduled conversations involving school personnel on issues such as teaching methodology, lesson plans, or coordination of service provision unless those issues are addressed in your child's IEP. Covered meetings also do not include preparatory activities that we engage in that will be discussed at a later meeting.

## **SURROGATE PARENTS**

### ***When is a surrogate parent needed?***

There are times in the lives of some children with disabilities when a surrogate parent is needed to represent the child's special education interests. For example, we must ask the court to appoint a surrogate parent when: (1) no parent can be identified, (2) we cannot, after reasonable efforts, locate the parents, or (3) the child is a ward of the state. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. The surrogate parent: (a) shall be determined by the court to possess knowledge and skills that will ensure adequate representation of the child, (b) may not be an employee of a state agency if that agency is

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

involved in the education or care of the child, and (c) may not have any interests that would conflict with the best interests of the child.

## **TRANSFER OF RIGHTS**

### **When do parental rights transfer to a child with a disability?**

When your child reaches age 18, we must provide any required notices to both you and your child. You retain the right to participate in meetings for which you receive notice. All other rights transfer to your child (except for a child with a disability who has been determined to be incompetent under state law or if you have retained court-appointed legal guardianship). We must inform you and your child of the rights that will transfer at least one year before your child reaches age 18. We must also inform you and your child in writing when the rights transfer. All rights accorded to parents under IDEA 2004 transfer to students who are incarcerated in an adult or juvenile, state, or local correctional institution.

## **ACCESS TO EDUCATIONAL RECORDS**

### ***How can I examine my child's education records?***

Procedures exist both to provide you with access to your child's education records and to protect any personally identifiable information in those records. If any education record includes information on a child in addition to yours, you may examine only the information relating to your child. If you request, we will give you a list of the types and locations of education records used by the school. We will also tell you who, if anyone other than you and authorized school personnel, has examined your child's records, the date access was given, and the purpose for which the person was authorized to review the records.

We must allow you to inspect and review any education records relating to your child with respect to identification, evaluation, and educational placement, and the provision of FAPE to your child. These records include any that are collected, maintained, or used by us to make decisions about your child's education. It should be noted that when these records are no longer required to be maintained by the school, we will inform you before destroying them. We will comply with your request to inspect or review your child's records without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement, or the provision of FAPE to your child. In no case may we delay more than 45 calendar days after your request has been made.

This right of inspection includes an explanation and interpretation of these records to you by school personnel. You may have your child's records inspected and reviewed by a representative of your choice. You may also request copies of the records. We may charge a fee for copies if the fee does not effectively prevent you from exercising your right to inspect and review those records. We will presume that you have the authority to inspect and review records relating to your child unless we have been advised that you do not have the authority under applicable law governing such matters as guardianship, separation, and divorce.

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

## ***How can I correct information in the records?***

If, after reviewing your child's education records, you believe that they contain information that is inaccurate or misleading, or that you believe violates your child's privacy or other rights, you may ask us to change that information. We will either make those changes or reject your request for change within a reasonable period of time. If we reject your request, we will inform you of our rejection and provide information on your right to a hearing. The hearing can be held by any school official or other individual who does not have a direct interest in the outcome.

Once the hearing is completed, the following procedures will be used:

1. If your objection is found to be justified, we will amend the information accordingly and inform you in writing.
2. If your objection is not found to be justified, you have the right to place a statement in your child's education records commenting on the information or giving the reasons for your disagreement with the decision. We will maintain your explanation as part of your child's records as long as we retain your child's records or any contested portion, and we will forward your comments along with other records should your child move to another school.

## ***Will I be told when you disclose my child's records?***

We must obtain your consent before allowing information to be used for a purpose other than that for which it was collected or before disclosing personally identifiable information about your child to anyone not entitled to see it under state or federal law. You can review the names and positions of school personnel entitled to see personally identifiable information about your child at the location where the files are maintained. We are responsible for insuring the confidentiality of personally identifiable information about all students, as well as for providing information to you about your rights under the Family Education Rights and Privacy Act (FERPA) and its implementing regulations. This federal law is the primary statute protecting your privacy and that of your child. We may release your child's educational records without your consent under specific exceptions allowed under the law.

## **INDEPENDENT EDUCATIONAL EVALUATION**

### ***Can my child be tested at the expense of the school?***

You have the right to an independent evaluation at public expense (at the expense of the school) if you disagree with the evaluation performed or obtained by the school. This evaluation is called an independent educational evaluation (IEE) and should be carried out by qualified persons who are not employed by the school. If you request information on how to obtain an IEE, we shall provide you with information about where an evaluation may be obtained. We will also supply you with information regarding the criteria applicable to an IEE.

We may ask you why you object to the evaluation performed or obtained by the school. However, that explanation cannot be required and we may not unreasonably delay providing the information on how to obtain an IEE because of the request by us regarding the reasons for your objection.

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

## ***Must the school always pay for an independent educational evaluation that I request?***

If you request an IEE, we may initiate an impartial due process hearing to show that our evaluation is appropriate. If the final decision of the impartial due process hearing officer is that our evaluation is appropriate, you still have the right to an IEE, but not at public expense.

## ***Must the results of the independent educational evaluation be considered by the school in making decisions about my child?***

We must consider the results from an IEE regardless of whether the evaluation has been completed at public or private expense.

## ***Are there any other times when an independent educational evaluation might be required?***

An impartial due process hearing officer may request an IEE as part of a hearing. When this happens, the cost of the evaluation must be at public expense.

## **UNILATERAL PLACEMENT OF CHILDREN BY PARENTS IN PRIVATE SCHOOLS**

### ***Can I place my child in a private school and expect the public school to pay for the placement?***

We do not have to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if we make FAPE available to your child and you elect to place your child in a private school or facility. However, we may be required to reimburse you for the cost of that placement under certain circumstances. You must notify us if you decide to remove your child from the school and place your child in a private school. It should be noted that if you unilaterally place your child in a private school, there is no individual entitlement to special education and related services for your child. However, a proportionate share of federal funds is reserved to provide special education and related services for students with disabilities placed in private schools by their parents. Services may be limited in scope and amount.

### ***Under what circumstances can I be reimbursed for the cost of enrolling my child in a private school?***

The reimbursement provisions apply only if your child previously received special education and related services under the authority of a public agency and you enrolled your child in a private elementary or secondary school or facility without our consent or referral. Under these circumstances, reimbursement can be ordered if a court or hearing officer finds that we did not make a free appropriate public education available to your child in a timely manner before you enrolled your child in the private school or facility.

### ***Why would I be denied the cost of reimbursement?***

A court or an impartial due process hearing officer may reduce or deny the cost of the reimbursement if you have not complied with the requirement to inform us of your intention to place your child in a private school. This requirement can be fulfilled in one of two ways. First, at the last individualized education program (IEP) meeting you attend prior to removing your



# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

child to a private school, you can inform the IEP team that you reject the placement proposed by us, state your concern, and state your intention to enroll your child in a private school at public expense. Or, you can give written notice of this information to us at least ten business days (including holidays that occur on a business day) prior to removing your child from the public school. Reimbursement may not be reduced or denied for failure to provide this notice if a parent is illiterate or cannot write in English, if reducing or denying reimbursement would likely result in physical or serious emotional harm to your child, if we prevented you from providing such notice, or if you were not informed that you must provide this notice to us.

Reimbursement may also be reduced or denied if we provided written notice of our intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable) prior to your child's removal from the public school, and you did not make your child available for such an evaluation. Reimbursement may also be reduced or denied if a court finds that actions that you took were unreasonable.

## **HOW DISPUTES ARE RESOLVED**

### **MEDIATION**

#### ***What is mediation?***

Mediation is a voluntary process that brings together the parents and the school with a third party in an attempt to resolve the disagreement(s) through a structured, yet informal meeting. This third party mediator is a person who is qualified, impartial, and trained in effective mediation techniques. The state has developed a mediation system to assist families and schools in resolving disagreements regarding special education. The costs associated with this process are paid by the state. Mediation must be available whenever an impartial due process hearing is requested, but may not be used to delay or deny your right to an impartial due process hearing. Mediation cannot be used to extend the 45 calendar day timeline set for impartial due process hearings, unless both parties request that the impartial due process hearing officer postpone the impartial due process hearing, pending mediation efforts.

#### ***What kinds of disagreements can be handled through mediation?***

Any dispute relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to your child may be discussed and, if possible, resolved through mediation.

#### ***How does mediation work?***

Either party can request mediation. If both parties agree, the State should be contacted and a request made for assignment of a mediator. The mediator will arrange for the parties to meet in sessions that are scheduled at times and in places convenient to the parties. Any decisions reached through mediation will be put into a written agreement. This written agreement is a legally binding agreement that is signed by both the parent and a representative of the school who has the authority to make the commitments. This agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. Discussions that occur during

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

the mediation process are confidential and may not be used as evidence in any subsequent impartial due process hearing or in court proceedings. The parties may be required to sign a confidentiality pledge prior to beginning the mediation process.

## ***Who will serve as a mediator?***

The mediator will be randomly selected from a list of individuals who are qualified mediators and who are knowledgeable about the laws and regulations relating to the provision of special education and related services. The person who serves as the mediator must not have a personal or professional conflict of interest and may not be an employee of any public school or state agency. The mediator is not an employee of the State solely because he or she is paid by the State to serve as a mediator.

## ***Can I be required to use mediation?***

Since this is a voluntary process, you cannot be required to participate in mediation. However, if you choose not to participate, the law permits us to establish procedures to require you to meet with a disinterested party from one of the parent information centers, or other appropriate alternative dispute resolution groups or persons. This meeting is designed to encourage the use and explain the benefits of the process to you and must be free and at a time and location that is convenient to you.

## ***How can I obtain information about mediation?***

You can contact us or the dispute resolution coordinator at the Exceptional Student Services division of the Arizona Department of Education for information on the process or to request mediation.

## **STATE COMPLAINT PROCESS**

### ***What is the state complaint process?***

You have the right to file a complaint with the Exceptional Student Services division of the Arizona Department of Education when you believe that we are not complying with federal or state special education laws and regulations. This complaint can deal with any aspect of the process relative to identification, evaluation, placement, or the provision of FAPE.

### ***What do I need to do to file a complaint with the State?***

Your complaint must be in writing to the Department of Education, signed and dated. A model complaint form may be found on the Arizona Department of Education's Web site at <http://www.ade.az.gov/ess/dispute/complaintforms/>

Your complaint must include your child's name, contact information, and the facts related to the alleged violation(s), and it must be filed within one calendar year of the alleged violation(s). Your complaint must be sent to: Dispute Resolution Coordinator, Arizona Department of Education, Exceptional Student Services, 1535 West Jefferson, Phoenix, AZ 85007.

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

## ***What can I expect to happen when I file a complaint with the State?***

When your complaint is received by the dispute resolution coordinator, it is reviewed and an investigator is assigned. You will be notified and a copy of your complaint will be forwarded to us. You will be contacted to ensure that the investigator understands your concerns and to discuss any additional information that you believe may be relevant. Additionally, we will be contacted to discuss the procedures that will be used and to gather preliminary information that may be needed. During the initial contact with the parent and the school, the investigator will determine if early complaint resolution may be an option for resolving the dispute.

Early complaint resolution (ECR) is a process available when there is a possibility for mutual resolution without the need for a full, formal investigation. If the investigator determines that attempts to informally resolve the complaint through ECR would be futile or if attempts to resolve the case through the ECR process are unsuccessful, then the complaint will go on to a full investigation. A decision is then made as to whether the investigator will do an on-site visit or request that we submit information in writing. The investigator will complete his or her investigation and give you his or her decision within 60 calendar days. The decision will include findings of fact and establish a corrective action plan, if one is required. An extension of this timeline will only be made if there are extraordinary circumstances. If this occurs, all parties will be notified in writing.

## ***What will happen if I request a due process hearing while a complaint is being investigated?***

If a written complaint is received that is also the subject of a due process hearing or that contains several issues one or more of which are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. The State complaint process must resolve any issue in the complaint that is not a part of the due process action.

## **DUE PROCESS SYSTEM**

### ***What is an impartial due process hearing?***

An impartial due process hearing is the process that is used to resolve disputes between parents and schools. In this process an impartial and trained third person agrees to hear both sides of the dispute and make a decision based upon state laws and regulations, the Individuals with Disabilities Education Act Amendments of 2004 (IDEA 2004), or similar cases that have been settled in court. An impartial due process hearing will be conducted in accordance with the requirements of applicable federal and state laws and regulations.

The impartial due process hearing officer's decision is final unless either party seeks judicial review of the decision in the appropriate state or federal court. The party seeking judicial review of the decision must bring the civil action within 35 days from receipt of the decision of the hearing officer.

### ***What disputes can be brought to an impartial due process hearing?***

You can bring disputes involving your child's identification, evaluation, placement, or the provision of a free appropriate public education (FAPE) for your child to a due process hearing.

# SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS

## *How do I request an impartial due process hearing?*

If you decide that you want an impartial due process hearing, the request—called a due process complaint notice—must be in writing to the chief administrator of the school. A copy of this request must also be forwarded to the Arizona Department of Education/Exceptional Student Services. You must provide your child's name and address, and the name of the school or program your child is attending. You must describe the nature of the dispute and the facts relating to the problem. **The alleged violation must have occurred not more than two years before the date the parent or school knew or should have known about the alleged action that forms the basis of the due process complaint.** Further, you must propose a resolution to the problem to the extent possible at the time. The request for a hearing must include all of the required information (child's name and address, name of the school/program your child is attending, nature of the dispute, facts relating to the dispute and a proposed resolution). We will provide you with information on how to obtain free or low-cost legal services or other relevant services, if an impartial due process hearing is initiated by you or by the school. A model form for requesting a due process hearing may be found on the Arizona Department of Education's Web site at <http://www.ade.az.gov/ess/dispute/default.asp>

## *When is an impartial due process hearing available?*

An impartial due process hearing may be requested by a parent or legal guardian, or by the student, if he or she is at least 18 years of age but less than 22 years old. We may also request an impartial due process hearing. An impartial due process hearing may be requested because of a disagreement concerning any matter relating to the identification, evaluation, or educational placement of your child, or the provision of FAPE to such child. Remember, the alleged violation must have occurred not more than two years before the date the parent or school knew or should have known about the alleged action that forms the basis of the due process complaint.

The following are examples of reasons you might seek an impartial due process hearing:

1. We refuse to identify, evaluate, or appropriately serve your child.
2. We fail to consider results of an independent educational evaluation (IEE).
3. You disagree with a proposed individualized education program (IEP).
4. You object to termination of your child's special education program.
5. You believe our proposed placement will not meet your child's needs as stated in the IEP.
6. You believe the placement is not in the least restrictive environment (LRE) to meet your child's needs.
7. You disagree with our intent to graduate your child.

Examples of circumstances in which we may initiate an impartial due process hearing are:

1. You request an independent education evaluation, and we believe that our evaluation is appropriate.
2. You refuse consent for an evaluation or reevaluation, and we believe that without this information, we may be unable to provide FAPE to your child.

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

## ***What happens after the due process complaint notice is filed?***

If the non-complaining party (parent or school) wishes to challenge the sufficiency of the due process complaint notice, the party must notify the hearing officer and the complaining party within 15 days of receiving the complaint. The hearing officer then has five days to determine if the notice meets the requirements set forth in IDEA 2004 and immediately notify both parties of the determination.

If we have not previously sent you prior written notice regarding the subject matter contained in your due process complaint notice, the school has ten days to send you a response that shall include the following information: (1) an explanation of why the agency proposed to refused to take the action raised in the complaint; (2) a description of other options that the IEP team considered and the reasons why those options were rejected; (3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (4) a description of the factors that are relevant to the agency's proposal or refusal.

Within 15 days of the school's receiving your request for a due process hearing, we must meet to discuss the complaint and the facts that form the basis of the complaint and have an opportunity to resolve the complaint. This meeting is called a resolution session. A representative of the school who has decision-making authority must attend the meeting. The school may not have an attorney present unless the parent is accompanied by an attorney. The parents and the school can agree in writing to waive this session or agree to use the mediation process. If the complaint cannot be resolved within 30 days of the receipt of the complaint, a due process hearing will proceed and the timelines will begin. If a resolution agreement is reached, the parties must execute a legally binding agreement. However, this agreement can be voided by either party within three business days of the agreement's execution.

If a hearing is necessary, not less than five business days prior to the hearing, each party must disclose to all other parties, all evaluations completed to that date, and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A party may amend its due process request if the other party consents in writing and is given the opportunity to resolve the complaint in a resolution session or if the hearing officer grants permission at any time no later than five days before the due process hearing occurs. (The timeline must begin again at the time the party files an amended request.)

## ***Who will conduct the impartial due process hearing?***

The due process hearing is conducted by a person known as a due process hearing officer. This person has the responsibility of assuring that proper procedures are followed and that the rights of the parties are protected. A due process hearing officer shall be:

1. Unbiased—not prejudiced for or against any party in the impartial due process hearing;
2. Disinterested—not having any personal or professional interest that would conflict with his or her objectivity in the impartial due process hearing;
3. Independent—may not be an officer or employee of the school, the Arizona Department of Education, or any other public agency involved in the education or care of the child (a person

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

who otherwise qualifies to conduct an impartial due process hearing is not an employee of the agency solely because he or she is paid by the agency to serve as an impartial due process hearing officer);

4. Trained by the Arizona Department of Education as to state and federal laws and regulations relating to the identification, evaluation, placement, and the provision of a free appropriate public education (FAPE) for children with disabilities;
5. Knowledgeable and possess the ability to conduct hearings, and render and write decisions in accordance with appropriate, standard legal practice.

## ***How long will an impartial due process hearing decision take?***

The due process hearing must be conducted and a copy of the due process hearing officer's decision must be delivered to both parties no later than 45 school days after the written request for the hearing is received. However, this timeline may be extended if the due process hearing officer grants a specific extension of time following the request of either party. The due process hearing officer must reach a decision and deliver a copy of written or, at your option, electronic findings of fact and decisions to each of the parties. If the school or you do not take any further action, the due process hearing decision is final.

## ***What procedures will be followed during the impartial due process hearing?***

The due process hearing officer shall preside at the due process hearing and shall conduct the proceedings in a fair and impartial manner to ensure that all parties involved have the right to:

1. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
2. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the due process hearing; and
3. Produce outside expert witnesses and be accompanied and advised by counsel and by individuals with special knowledge or training with respect to problems of children with disabilities.

(The party requesting the due process hearing will not be allowed to raise issues at the due process hearing that were not raised in the request unless the other party agrees otherwise.)

## ***What are my rights during an impartial due process hearing?***

The due process hearing will be conducted at a time and place that is convenient to you and to your child, who may be present if you wish. The due process hearing officer will open the hearing to the public at your request; otherwise, the hearing is closed to the public. In cases where there are language differences, an interpreter shall be provided for you. You have all of the rights in the procedures noted above. At the conclusion of the due process hearing, either party or its representative(s) has the right to obtain a written, or at your option, electronic verbatim record of the hearing.

## ***How does a hearing officer make decisions?***

A hearing officer's decision must be made on substantive grounds based on a determination as to whether the child received a free appropriate public education. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

- impeded the child's right to a free appropriate public education;
- significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the child; or
- caused a deprivation of educational benefits.

## ***Can the impartial due process hearing decision be appealed?***

Either party may appeal the due process hearing decision to the appropriate state or federal court within 35 days after receiving the decision.

## ***Can I be awarded attorney's fees?***

You may be awarded attorney's fees **only** by the state or federal court if you prevail on a substantial number of the issues in a particular due process hearing. You can substantially prevail without winning everything that you want from us. You may also be awarded attorney's fees if the court finds that we unnecessarily drew out the final resolution of the action or proceedings or if there was a violation of this section.

Fees awarded shall be based on rates prevailing in the community in which the action or proceedings arose for the kind and quality of services furnished and are not subject to the use of a bonus or multiplier. You cannot be awarded attorney's fees for IEP meetings, unless the meeting is ordered as a result of an administrative proceeding or judicial action. You also cannot be awarded attorney's fees for a mediation conducted prior to the filing of a request for an impartial due process hearing.

Examples of when attorney fees may be awarded to the other party's attorney: if a request for due process was filed that was frivolous, unreasonable, or without foundation or continues to be litigated after the litigation clearly became frivolous, unreasonable, or without foundation; or if a request for due process was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. Attorney's fees may be reduced if you unreasonably draw out the final resolution, if your attorney's fees exceed the prevailing hourly rate, if the time spent by the attorney and the legal services furnished were excessive, or if your attorney failed to provide appropriate information to us. Whether you are entitled to attorney's fees can be a difficult determination and must be made by a court, not by the due process hearing officer.

## ***Where will my child be placed during the impartial due process hearing or court action?***

In general, unless we both agree otherwise, we cannot change your child's placement as it existed on the day you asked for a due process hearing until the completion of all legal proceedings. However, if a due process hearing officer agrees with you that a change of placement is appropriate, that placement must be treated as an agreement between you and the school. If your child is entering public school for the first time, the law requires that, if you agree, we place him or her in the public school program that he or she would otherwise be entitled to attend, until any hearings or court proceedings are concluded, unless we both agree to a different placement. There are some exceptions to this general rule. (See the Discipline Procedures section.)

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

## **DISCIPLINE PROCEDURES**

### ***Is the school ever permitted to remove my child with a disability from his or her placement?***

We are permitted, under law, to remove your child from his or her current placement under certain circumstances. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violated a code of student conduct. School personnel can place your child in an appropriate interim alternative educational setting (IAES), another setting, or suspend your child for not more than ten consecutive school days, if this is the policy we have for all students.

### ***Are there any services the school must provide if my child with a disability is removed from his or her current placement for more than a total of ten school days in a school year?***

Beginning on the eleventh cumulative day in a school year that your child with a disability is removed from his or her current placement, we must provide services determined to be necessary to enable your child to: (1) continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP; and (2) receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. The IEP team would determine where services would be provided.

### ***When can my child with a disability be placed in an interim alternative educational setting (IAES)?***

We can place your child in an appropriate interim alternative educational setting for not more than 45 school days (without regard to whether the behavior is determined to be a manifestation of the child's disability) if he or she:

- carries or possesses a weapon to or at school, on school premises, or to or at a school function;
- knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

### ***If the school intends to place my child with a disability in an interim alternative educational setting or to initiate a "change of placement" for disciplinary reasons for more than ten school days, what must school personnel do?***

We must notify you that this action is going to be taken no later than the date on which the decision is made. The notification of our decision must include all procedural safeguards. Then immediately, if possible, but no later than ten school days after we make a decision to place your child in an interim alternative educational setting or initiate a "change of placement" for disciplinary reasons, we must review the relationship between your child's disability and the behavior that resulted in the disciplinary action. This is known as a manifestation determination



# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

review. The review of the relationship between the disability and the behavior must be conducted by the parent and relevant members of the IEP team.

## ***How do we decide if there is a relationship between my child's disability and the behavior that led to disciplinary action?***

The local education agency, the parent, and relevant members of the IEP team must:

First, in terms of the behavior subject to disciplinary action:

1. Review all relevant information in your child's file, including the IEP;
2. Consider teacher observations of your child; and
3. Consider any relevant information provided by you; and

Then determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was a direct result of the local education agency's failure to implement the IEP.

## ***What happens if my child's behavior is determined to be a manifestation of his or her disability?***

If your child's behavior is determined to be a manifestation of his or her disability, the IEP team must:

1. Conduct a functional behavioral assessment and implement a behavior intervention plan if the team had not conducted such an assessment prior to the behavior that resulted in a change in placement; and
2. In the situation in which a behavioral intervention plan had already been developed, the team must review the plan and modify it, as necessary, to address the behavior and return the child to the placement from which the child was removed, unless the parent and the school agree to a change in placement as part of the modification of the behavioral intervention plan.

## ***What happens if my child's behavior is not determined to be a manifestation of his or her disability?***

If your child's behavior is determined not to be a manifestation of his or her disability, disciplinary procedures that are used with children without disabilities can be used. If we initiate disciplinary procedures applicable to all children, we shall ensure that the special education and disciplinary records of your child are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. If your child is suspended from school for more than ten school days or expelled from school, we must continue to provide him or her with a free appropriate public education (FAPE). Educational services must be provided to the extent necessary to enable your child to: (1) continue to participate in the general curriculum, although in another setting; (2) progress toward meeting the goals set out in your child's IEP; and (3) receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur.

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

## ***What if I disagree with the outcome of the manifestation determination review or placement decision?***

If you disagree with the determination that your child's behavior is not a manifestation of your child's disability or with any decision regarding placement as a result of disciplinary action, you may request an impartial due process hearing. If we believe that maintaining the current placement of your child is substantially likely to result in injury to the child or to others, we may request a due process hearing as well. This type of hearing would be expedited. The school must arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within ten school days after the hearing. The hearing officer would either: (1) return your child to the placement from which he or she was removed; or (2) order a change in placement of your child to an appropriate interim alternative setting for not more than 45 school days, if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to the child or to others.

## ***What is the child's placement during the appeals process as described above?***

Your child will remain in the interim setting, unless we agree otherwise, until the impartial due process hearing officer has made a decision or until the time period for the interim placement expires, whichever occurs first.

## ***Can my child with a disability be reported to law enforcement authorities?***

Nothing in these provisions prohibits us from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities under state and federal law. The school reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of your child are transmitted for consideration by the appropriate authorities to whom it reports the crime. The school reporting a crime may transmit copies of your child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

## ***What protection does my child have if he or she has not been identified as being a child with a disability?***

A child who has not been determined to be eligible for special education and related services, who has engaged in behavior that violates any rule or code of conduct of the school, may claim any of the disciplinary protections if we had knowledge that your child had a possible disability before the behavior occurred. We are determined to have knowledge if:

1. You, as the parent, expressed your concerns that your child needed special education and related services, in writing (or orally, under certain conditions);
2. Your child's behavior or performance demonstrates the need for such services;
3. You requested an evaluation of your child; or
4. The teacher or other school personnel expressed concern about the behavior or performance of your child to the director of special education or other school personnel in accordance with our established child find or special education referral system.

# **SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN UNDER FEDERAL AND STATE REQUIREMENTS**

**Note # 1:** We would not be deemed to have knowledge that your child is a child with a disability if we either: (1) conducted an evaluation and determined that your child was not a child with a disability or (2) determined that an evaluation was not necessary, and in either situation, provided a prior written notice to you of the determination of the evaluation. Also, we would not be deemed to have knowledge that your child is a child with a disability if you had not allowed an evaluation or had refused services for your child.

**Note # 2:** If we do not have knowledge that your child is a child with a disability (in accordance with the provisions addressed above) prior to taking disciplinary measures against your child, your child may be subjected to the same disciplinary measures as applied to children without disabilities who engaged in comparable behaviors consistent with the following:

- (a) If a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
- (b) Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- (c) If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by us and information provided by you, we shall provide special education and related services in accordance with federal and state requirements.

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Finally, it is important that you understand all of these rights. Make sure that you ask questions until you understand all of the procedures to which you and your child are entitled.